

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

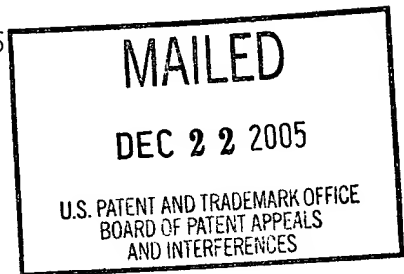
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Stephen A. Hopper and Jack A. Gipson

Appeal No. 2005-2702
Application No. 09/614,026

ON BRIEF



Before KRASS, BARRETT, and MACDONALD, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-7, 9-18, and 20-26.

The invention pertains to a wireless communication network. More particularly, it relates to determining a pro-active region of a mobile ad hoc network. A "pro-active region" is that region of the network comprising routes to other users that are most

Appeal No. 2005-2702
Application No. 09/614,026

likely to be used. The selected users are said to be in a "pro-active region" of a user A relative to the other users (see page 2 of the specification).

Representative independent claim 1 is reproduced as follows:

A method of operating a wireless device, comprising:

- receiving positional information from a plurality of users in an ad hoc network;
- selecting a first portion of the plurality of users to be within a pro active region based upon said positional information;
- maintaining information on the users selected to be within the pro active region; and
- accessing topographical information on a region in which the wireless device is currently located,

wherein selecting the first portion of the plurality of users further comprises selecting the users based on the positional and topographical information.

The examiner relies on the following references:

Robert et al. (Robert)	6,104,712	Aug. 15, 2000
		filed Feb. 22, 1999)

Additionally, the examiner relies on Section 2144.03 of the Manual of Patent Examining Procedure (MPEP) relating to "well known prior art."

Claims 1-7, 9-18, 20 and 21 stand rejected under 35 U.S.C. § 102 (e) as anticipated by Robert.

Claims 22-26 stand rejected under 35 U.S.C. § 103 as unpatentable over Robert in view of MPEP § 2144.03.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

At the outset, we note that, in accordance with appellants' grouping of the claims at page 8 of the principal brief, all claims will stand or fall together. Accordingly, we will focus on independent claim 1.

Turning, first, to the rejection under 35 U.S.C. § 102 (e), a rejection for anticipation under section 102 requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

With regard to independent claim 1, it is the examiner's position that Robert discloses the instant claimed method of operating an ad hoc network in a wireless environment, wherein a transceiver is capable of receiving positional information and a GPS system is capable of generating positional information (column 2, lines 4-7, and 22-35); a method wherein a pro-active region is selected based on the positional information of the users and a method of maintaining this information on the users

Appeal No. 2005-2702
Application No. 09/614,026

of the pro-active region (the examiner identifies the abstract, the background section, the summary of the invention, and column 4, line 34, through column 5, line 33); a method of obtaining topographical information, indicated as terrain and environmental surroundings in the reference, on a region in which the wireless device/node is currently located; and a method of selecting the users/nodes based on positional information and topographical information (column 2, lines 21-40).

It is appellants' position that Robert fails to disclose the claim limitation of selecting a first portion of a plurality of users to be within a pro active region based upon positional and topographic information and maintaining information on the users selected to be within a pro active region. In particular, appellants admit that Robert mentions that transceiver characteristics may be altered according to environment surroundings, terrain, or other factors (column 2, lines 36-40), but appellants maintain that this is not a disclosure of accessing topographic information and selecting a plurality of users based on the topographical information because altering transceiver characteristics is not tantamount to selecting a plurality of users, and this also does not constitute a disclosure of accessing topographic information.

Appellants further argue that Robert also does not disclose maintaining information on users selected to be in a pro-active

Appellants further argue that Robert also does not disclose maintaining information on users selected to be in a pro-active region. They point out that column 2, lines 20-40, of Robert states that a node-to-node route between a source and a destination is determined for data transfer between a source and a destination, so that the environmental surroundings and terrain are only considered when data transfer is performed, not for the creation of a pro-active region, as claimed (see principal brief-page 5).

Moreover, appellants point out that while Robert mentions "network topography" at column 4, line 46, this is not the claimed topographic information because topographic information is defined in the specification, at page 11, lines 2-20, as being formations that may interfere with communications. In contrast, Robert's network topography defines the ad hoc network, not formations that may interfere with communications.

Appellants also point out that while Robert mentions using longitude, latitude, and an elevation parameter (column 6, lines 45-47), these parameters are not topographic information, as claimed, because these parameters are position parameters, similar to the claimed position information, whereas topographic information is separate information from position parameters. In particular, contend appellants, topographic information can

represent formations that may interfere with communications (principal brief-page 6).

Therefore, appellants conclude that Robert does not disclose or suggest selecting a first portion of a plurality of users to be within a pro-active region based upon positional and topographic information and maintaining information on the users selected to be within a pro-active region, as required by the instant claims.

After a review of the Robert reference, as well as the arguments of appellants and the examiner, we agree with appellants that Robert does not anticipate the instant claimed subject matter, within the meaning of 35 U.S.C. § 102 (e).

The instant claims all require that the selection of the first portion of the plurality of users comprises "selecting the users based on the positional and topographical information." The examiner relies on column 2, lines 21-40, of Robert to provide the teaching of obtaining topographical information, and the teaching of using this information, along with positional information, to select a first portion of a plurality of users.

As indicated by appellants (e.g., bottom of page 5 of the principal brief), page 11, lines 2-20, of the instant specification indicates that the "topographical information" of interest to appellants is defined as being "formations that may

interfere with communications" (principal brief-pages 5-6).

While our review of this portion of the specification does not indicate a specific definition, lines 4-5 of page 11, do recite that users may be located "on the topographical maps to determine if any naturally occurring geographical formations may interfere with communications." Further, *id.* lines 12-14 add that, in addition to naturally occurring topographical information, "it may also be useful to include topographical maps of manmade structures. In large cities, buildings may obstruct communication between adjacent users"

Thus, it does appear clear to us, from the description at page 11 of the specification regarding the "topographical information" to be gleaned from topographical maps, that appellants have defined "topographical information" to mean "formations that may interfere with communications" and we will so limit the term "topographical information" in the instant claims to include *only* that definition.

Appellants may be their own lexicographers, up to a point, and the examiner is attempting to give a different definition to the term, "topographical information."

To the extent the examiner relies on the "network topography" at column 4, line 46, of Robert, we agree with appellants that the "network topography" of Robert defines the ad

hoc network, but it does not define or describe formations that may interfere with communications, as we find the claimed "topographical information" must describe. To the extent the examiner is relying on the alteration of transceiver characteristics according to "terrain" (column 2, lines 37-39, of Robert), there is no indication in Robert that "terrain" must refer to formations that may interfere with communications, as the claimed "topographical information" is defined. While it might seem apparent that skilled artisans would understand the word "terrain" to relate to formations that may interfere with communications, such as mountains, the rejection is under 35 U.S.C. § 102 and the reference is not crystal clear on this point.

Moreover, and more importantly, to the extent that such "terrain" may be construed to mean a formation that may interfere with communications, Robert only indicates that "transceiver characteristics may be altered" according to this "terrain." Altering transceiver characteristics based on "topographical information" is clearly different from the instant claim requirements of selecting the first portion of the plurality of users based on "topographical information" (as well as on positional information).

In the response, at pages 6-7 of the answer, the examiner does not dispute that the claimed "topographical information" is different than any topographical information Robert may disclose. The examiner merely contends that the word "topography" is given its broadest meaning which, in accordance with Webster's English Dictionary, is defined as "natural and man-made features of a place especially in a way to show their relative positions and elevations..." (Answer-pages 6-7). However, within reasonable limits, appellants are permitted to be their own lexicographer. Moreover, the dictionary definition offered by the examiner does not include "topographical information." As a claimed phrase, this is entitled to a narrower definition than "topography," as the claimed term is describing something very specific about the topography, viz, that the only information with which appellants' claimed subject matter is concerned is "formations that may interfere with communications."

Rather than argue the slight variances in definition, however, as we pointed out supra, even if we accepted the examiner's definition and concluded that Robert's "terrain" may refer to formations that may interfere with communications, the instant claimed subject matter is still not met by Robert because Robert only recites using the "terrain" to alter transceiver

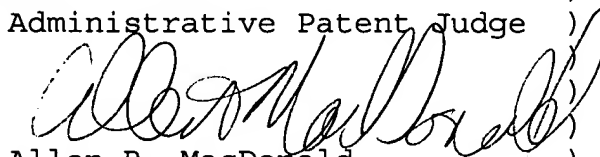
Appeal No. 2005-2702
Application No. 09/614,026

characteristics, and not to select a portion of a plurality of users based on the recited "terrain" and positional information. The examiner's decision rejecting claims 1-7, 9-18, 20, and 21 under 35 U.S.C. § 102 (e) and claims 22-26 under 35 U.S.C. § 103 is reversed.

REVERSED


Errol A. Krass)
Administrative Patent Judge)


Lee E. Barrett)
Administrative Patent Judge)


Allen R. MacDonald)
Administrative Patent Judge)

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Appeal No. 2005-2702
Application No. 09/614,026

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